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COMMISSION ON HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 32nd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 20 February 1995, at 3 p.m.

Chairman:	Mr. BIN HITAM	(Malaysia)
later:	Mr. DOBREV (Vice-Chairman)	(Bulgaria)

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(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

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The meeting was called to order at 3.10 p.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

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(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 10) (continued) (E/CN.4/1995/6-E/CN.4/Sub.2/1994/42, E/CN.4/1995/9-E/CN.4/Sub.2/1994/44, E/CN.4/1995/30, 31 and Add.1-4, 32, 33, 34 and Add.1 and Corr.1-2, 35-37, 38 and Add.1, 39-41, 100, 111 and 133; E/CN.4/1995/NGO/3, 6, 19, 23 and 37; E/CN.4/Sub.2/1994/22, 23 and Add.1, 24 and 33; A/49/484 and Corr.1 and Add.1)

1. Mr. PORTALES (Chile) said that a relatively new area in the field of human rights was the obligation of a State to compensate victims of serious violations of human rights which had been committed by agents of that State acting individually or in conformity with official policy.

2. With the re-establishment of democracy in Chile, one of the most urgent tasks was to establish the truth concerning human rights violations during the period of dictatorship and, on that basis, to restore the good name of the victims, to compensate their families and to achieve an effective reconciliation among all citizens.

3. For various reasons, the judiciary in his country had not been in a position to make a significant contribution to that effort. Consequently, the President of the Republic had established the National Commission on Truth and Reconciliation, composed of eight distinguished persons and assisted by lawyers, social workers and non-governmental organizations. The Commission's main objective had been to carry out investigations to establish officially the names of those individuals who had been murdered between September 1973 and March 1990 as a result of the illegal activities of State agents and the activities of those organizations which had engaged in violent combat against the regime. The Commission had also been mandated to clarify the historical truth with regard to the repressive policies of the dictatorship and to recommend measures to establish a solid framework of respect for human rights so that the tragedy in Chile could never be repeated.

4. After 16 years of distortion and cover-ups, the Commission's efforts had finally revealed the essentially repressive nature of the dictatorship. The Commission had effected the moral rehabilitation of many of the victims and had helped pave the way for compensation for their families. Its work had resulted in the gathering of new evidence in several pending cases involving

human rights violations. Lastly, the Commission had also made recommendations for future policy on the promotion and protection of human rights.

5. As a follow-up to the Commission, his Government had enacted legislation which, inter alia, established a National Corporation for Reparation and Reconciliation, mandated to continue the investigation of the 1973-1990 period, including tracing the remains of persons who had been murdered after enforced disappearances. Under the same legislation, families of the victims were entitled to receive lump-sum and monthly compensation and to receive support for the education of their children; in addition, families of deceased victims and all those who had been subject to violence and had survived were entitled to special health-care programmes.

6. Another basic element of the reparations policy was the establishment of the National Office for Returnees, which had provided assistance to former refugees by means of special arrangements to facilitate their reintegration into Chilean society. In addition children of victims of human rights violations were exempt from military service.

7. While it had not been possible to provide employment for the thousands of persons who had been dismissed for political reasons, legislation had been passed according to which they received social-security credit, at the expense of the State, for the period during which they had been barred from employment.

8. His Government was aware that those measures could never fully compensate for the suffering of the victims. It was, nevertheless, endeavouring to move forward on the path of truth, justice and reconciliation.

9. Ms. TREYDE (Australia) said that her Government was particularly concerned at the increase in enforced or involuntary disappearances in many parts of the world. Disappearances had occurred in 73 countries in 1994, almost double the number recorded five years previously. The Commission on Human Rights must continue to monitor that situation carefully and take whatever steps were necessary, particularly preventive ones, to halt the spread of that grave crime. While the Working Group on Enforced or Involuntary Disappearances had noted that most Governments had been cooperative, there was a group of countries which had failed to respond to all requests for assistance.

10. Her Government supported the Working Group's recommendation that the Commission should call on States to implement fully the provisions of the Declaration on the Protection of All Persons from Enforced Disappearance. It also supported the call for Governments to recognize the true value of non-governmental organizations, to refrain from subjecting them to harassment and to make it possible for them to realize their legitimate objectives.

11. The practice of arbitrary detention arose from various factors including the abuse of states of emergency, exercise of the powers specific to a state of emergency without a formal declaration, failure to observe the principle of proportionality between the gravity of the measures adopted and the situation involved, lack of precision in defining offences against State security and the existence of special or emergency jurisdictions.

12. Cases of arbitrary detention were not exclusive to repressive regimes, though there were more examples of arbitrary detention under such regimes and that status entailed greater risks and harsher conditions. Arbitrary detention also occurred, however, under democratic regimes, especially in connection with procedures for the admission or expulsion of aliens.

13. All States must recognize the importance of initiatives aimed at strengthening the rule of law, reinforcing the independence of the judiciary and making police forces more professional, in particular by increasing their knowledge of the major human rights instruments and the existing codes and regulations dealing with the treatment and protection of prisoners.

14. Legislation in many countries was imprecise and could lead to abuse, and her delegation agreed with the recommendation of the Working Group on Arbitrary Detention that the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders should consider declarations or recommendations designed to ensure that the classification of offences under national legislation was in conformity with contemporary criminal law.

15. Her Government attached particular importance to the work of the Special Rapporteur on the question of torture. It noted with concern that, in certain countries, rape and other forms of sexual assault were reportedly a common means of torture. Rape was not only a particularly traumatic form of torture but could also give rise to severe social consequences. Moreover, those using rape as a means of torture were apparently able to act with more impunity than those using other methods.

16. Her Government endorsed the recommendation of the Committee on the Elimination of Discrimination against Women that gender-sensitive training should be provided for judicial and law-enforcement officers and other public officials. It also supported the Special Rapporteur's recommendation that female security personnel should be present during the interrogation of women detainees. The need to renew the Special Rapporteur's mandate was all too evident and she urged States to put an end to de facto or de jure impunity.

17. In his report (E/CN.4/1995/32), the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression concluded that violations of that right often occurred in conjunction with violations of other human rights; he pointed out that a free press not only protected democracy but was also a social and economic asset. Her delegation recognized that the exercise of that right carried with it responsibilities and duties.

18. Her delegation welcomed the first report of the Special Rapporteur on the independence of judges and lawyers (E/CN.4/1995/39) and looked forward to his work in the areas he had identified, including the excessive use of prerogatives by governmental authorities, paralysis of the judiciary in states of emergency, and the relationship between the media and the judiciary. Her Government recognized the importance of encouraging and aiding countries in transition to democracy through the use of advisory services and technical assistance in the field of the administration of justice.

19. It was regrettable that less than half of the States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment had made declarations under articles 21 and 22 of the Convention. It was only through review by the Committee against Torture that an objective assessment could be made of whether a particular State was complying with its obligations under the Convention.

20. The reports before the Commission demonstrated that torture, disappearances and the abuse of detainees persisted. They also emphasized the importance of the Commission's current deliberations on institution-building and the effective implementation of human rights standards. One matter of serious concern was the lack of adequate resources for the various mechanisms set up to monitor human rights violations.

21. States must cooperate fully with the thematic mechanisms, which were an effective non-confrontational means of responding to situations of human rights abuse. Those mechanisms also enabled the Commission to scrutinize human rights situations without adopting a country-specific resolution. States also had an obligation to bring to justice those responsible for grave human rights violations. Her delegation thus called on all States to abrogate legislation leading to impunity and to prosecute those persons responsible for serious human rights abuses.

22. Mr. MORA (Cuba) said that there had been many examples of abuses and irregularities in the manner in which the Working Group on Arbitrary Detention had been carrying out its mandate. Despite repeated warnings by members of the Commission, the Working Group had unilaterally broadened the scope of its mandate to deal with cases of detention based on enforceable judgements, thus calling into question international law.

23. Allowing a United Nations body to criticize sentences handed down by the judiciary of a Member State was in fact tantamount to authorizing it to judge not only whether the court which had issued the sentence was competent to do so but also whether it had acted in accordance with the legislation pertaining to criminal proceedings. Such a practice was in violation of the principle of State sovereignty. It was, therefore, imperative for the Working Group to remain within the limits of its original mandate.

24. The moral force of the Working Group derived from its strict respect for the principles of non-discrimination, objectivity, impartiality and non-selectivity in the fulfilment of its mandate. It must be above all political considerations and pressures. Yet, those principles were being called into question by the actions of the Working Group. He failed to see by what right the Working Group established guidelines concerning the coordination of the entire set of the Commission's mechanisms. From a working group on arbitrary detention, it had transformed itself into a working group on arbitrary recommendations.

25. Instead of establishing a framework of cooperation within which cases of arbitrary detention could be resolved, the Working Group had set itself up as a judge. It classified cases as arbitrary detention on the basis of dubious information and rejected the replies offered by Governments, which could only dissuade them from further cooperation.

26. The Working Group had classified as arbitrary detention a particular case in his own country in which the defendant, accused of international drug trafficking, had been duly tried and convicted in an open trial with all possible legal guarantees.

27. He wished to draw attention to the fact that, in its report covering the year 1994, the Working Group had not mentioned a single case of arbitrary detention in Europe or the United States of America. He found it difficult to credit that those practices were restricted to third-world countries. Possibly the Working Group believed that certain societies were superior to others, but he failed to see how it could ignore legislation in European countries which permitted arbitrary detention, but exclusively of foreigners, especially those from the south. The Working Group had also failed to mention the situation of 5,000 Cubans, many of whom had already served prison terms, who were being held arbitrarily in detention centres in the United States and subjected to inhuman treatment.

28. The Working Group was applying a double standard in its work which would eventually threaten its very existence. He urged it to return to its original mandate.

29. Mr. FLORIAN (Peru) said that the human rights situation in his country had improved substantially. That fact was clearly supported by quantitative and qualitative information gathered by national non-governmental organizations. Nevertheless, inaccurate perceptions of the situation persisted and, in that connection, he wished to emphasize once again the need for a responsible and balanced approach to reviewing the situation of human rights in any particular country.

30. The international community was well aware of the terrorist challenge his country had had to face over the last 14 years. Many human rights activists had been victims of that terrorism. His Government had thus been obliged to enact drastic anti-terrorist legislation. At the same time, those laws were not permanent and were being rendered more flexible as progress was made on the road to peace. A special committee of the Lima bar was currently examining possible modifications of the anti-terrorist laws.

31. Non-governmental organizations in his country were also concerned about the so-called "faceless judges". For practically the entire 1980s, the judiciary had been almost paralysed by threats of terrorism and, as a result, hundreds of terrorists had been released. The Government had thus been obliged to take steps to ensure the personal safety of judges presiding over trials involving terrorists. The institution of "faceless judges" was only one of several measures adopted to modernize the judiciary and provide it with the necessary resources and safety to become a genuine guarantor of the state of law. Other such measures were the recent establishment of the Constitutional Court, an independent body which monitored the constitutionality of the laws, and the creation of the National Council of the Judiciary, an independent body to appoint judges. In addition, Congress had before it a bill to eliminate the institution of "faceless judges".

32. His Government was aware that impunity was one of the main causes of the destabilization of society and of human rights violations. Over the past

seven years, more than 100 officers and over 400 non-commissioned officers of the forces of order had been prosecuted. Of that group, 28 officers and 151 non-commissioned officers had been convicted and imprisoned. In the well-known La Cantuta case, nine individuals had received prison terms and financial compensation had been awarded.

33. It was unfortunate that non-governmental organizations had paid little attention to the violations of human rights by terrorist groups in Peru. His Government recognized that excesses had been committed in the combat against terrorism, a combat which expressed the legitimate right of the Peruvians to defend themselves against the criminal violence of terrorist groups. It was, as always, willing to cooperate with international and regional human rights organizations.

34. Mr. Dobrev (Bulgaria), Vice-Chairman, took the Chair.

35. Mr. MENDOZA (El Salvador) said that the situation with regard to the freedom of opinion and of expression in the world was critical and urgent steps were needed to promote such respect and to achieve a universal conception of those rights. In that regard, the Special Rapporteur on the subject should also visit a developed country so as to ensure that his future reports were prepared from a more universal perspective.

36. In fulfilling his mandate, the Special Rapporteur should use a concept of freedom of opinion and of expression that was free from ideological considerations. Moreover, he should devote a special section in his next report to the way in which the right to freedom of opinion and expression was affected by the process of democratization in certain countries. While those rights were essential for the strengthening of democracy, countries in transition to democracy experienced many difficulties in guaranteeing their enjoyment and it was important to seek an understanding of the difficulties and to attempt to find solutions.

37. With regard to the communications which the Special Rapporteur had addressed to Governments, it would be useful for the members of the Commission if all communications, not least those to which replies had not been received, were included in future reports.

38. His delegation supported the Special Rapporteur's request for the support of one officer from the Centre for Human Rights in the discharge of his mandate.

39. On the question of involuntary and enforced disappearance, he noted that the Independent Expert for El Salvador, supported by the Working Group, had reported to the Commission that no cases of enforced or involuntary disappearances had been reported in El Salvador in recent years.

40. Finally, with regard to the presentation of the reports of the Working Group, it might have been better to omit Rwanda from the tables, since a certain amount of confusion resulted from the fact that that country had been listed as having zero disappearances. It would also be helpful if the figures for disappearances in both the current and previous year were given in order to portray the current trend more effectively.

41. Mr. LILLO (Chile) said that, given the nature of its mandate, the Working Group on Arbitrary Detention should concern itself not so much with the conditions of detention but with the actual fact that there were persons who, legitimately or arbitrarily, were being punished by States. Detention was arbitrary when it was not based on an order issued by a competent authority or when it constituted punishment for the legitimate exercise of human rights, such as freedom of opinion and expression, the right to live in or to leave one's country, and freedom of conscience. Lastly, detention was arbitrary when it resulted from a manifest and grave violation of the principle of due process of law.

42. The Working Group's intended missions to countries in different continents and with different political regimes reflected its desire to adhere strictly to its mandate within a framework of absolute impartiality and objectivity. Unfortunately, not all Governments cooperated with the Working Group, and many of them preferred to conceal the existence of prisoners of conscience by disqualifying the Working Group or by making vague references to the non-existence of arbitrary detention and to the constitutional rules which prevented them from providing the information requested. His delegation thus supported the Working Group's recommendation that the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders should consider the elaboration of a declaration aimed at ensuring that national laws were compatible with the requirements of contemporary penal standards. His delegation also supported the suggestion by the Chairman of the Working Group that the High Commissioner for Human Rights should be entrusted with the follow-up to Working Group decisions.

43. One third of the detentions which the Working Group on Arbitrary Detention examined stemmed from the exercise of the freedoms of opinion and expression. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stressed in his report (E/CN.4/1995/32) the fundamental nature of that right, since the extent to which it was protected was a reflection of the extent to which all the other human rights enshrined in the Universal Declaration of Human Rights and other international instruments were protected.

44. While article 19 of the International Covenant on Civil and Political Rights stated that the exercise of the right to freedom of expression carried with it special duties and responsibilities and might therefore be subject to certain restrictions, the general norm was still the protection of that freedom. Very often, violation of that freedom led to other human rights violations, including enforced disappearances, extrajudicial execution, torture, religious intolerance and arbitrary detention.

45. In that connection, the judicial branch had an important role to play in ensuring that persons detained for merely expressing opinions through non-violent means were released and those guilty of violating their freedom punished. The independence of the judiciary was, however, adversely affected by a number of factors including the existence of special courts, particularly military courts. States also abused their powers under states of emergency which placed restrictions on personal freedoms.

46. The Working Group should also give consideration to the delicate matter of judges who tried cases with their identities concealed. While that practice might be necessary to preserve the life of the judge, it could result in serious abuses.

47. For his part, the Special Rapporteur should also examine the question of attacks on the independence of lawyers, who were indispensable collaborators in the system of administration of justice.

48. Mr. GUJRAL (India) said that, although the United Nations system had made significant contributions to the development of international standards designed to ensure that all people were treated with dignity and in accordance with acceptable behavioural norms, effective compliance with those norms had yet to be secured. It followed therefore that, unless legislative, judicial and other remedial procedures and mechanisms were strengthened within each jurisdiction, the basic human rights to life and liberty could not be truly safeguarded.

49. India's commitment to the promotion and protection of human rights derived from the humanistic ethos of its centuries-old culture and civilization. Respect for human life and dignity and the rule of law were enshrined in the Constitution, which also guaranteed fundamental rights and freedoms to all citizens. Consequently, the criminal justice system contained safeguards against the arbitrary treatment of detainees.

50. India's independent judiciary zealously protected the constitutional rights of all citizens. The actions of the State in maintaining law and order were subject to judicial review and even the findings of courts martial could be challenged in a civil court. Moreover, any individual or group could bring cases of human rights violations before the high courts or the Supreme Court to seek a judicial remedy. In addition the Government had recently proposed to Parliament a number of legislative amendments aimed at ensuring greater transparency and accountability in the legal system.

51. Institutional arrangements had also been strengthened by the establishment of an independent National Human Rights Commission with wide-ranging powers, incorporation of human rights into Government business, and the establishment of human rights cells in the Ministry of Home Affairs and all state Governments.

52. The Indian system of parliamentary democracy provided a forum for the peaceful resolution of disputes and there was no justification for the expression of political dissent through violence. The deliberate use of violence could only be categorized as terrorism, which assumed a particularly malevolent form when aided, abetted and sponsored from abroad, as in the case of Jammu and Kashmir.

53. The scale and magnitude of the proxy war in that state could be gauged from the vast arsenal of sophisticated weaponry available to the terrorists. Political leaders, workers, civil servants, members of the judiciary and the press, intellectuals, educators, and community leaders had been killed, abducted or harassed to silence all possible dissent and destroy the social

system. Members of the minority community had been systematically targeted, resulting in a mass exodus of more than 250,000 of them from the Kashmir valley.

54. Notwithstanding the intensity and scale of terrorist violence, the security forces had exercised tremendous restraint in order to avoid civilian casualties. Despite the fact that over 922 members of the security personnel had lost their lives, wherever there was any suspicion of excess, action was taken in accordance with established practice against the suspected persons, who were punished if found guilty.

55. The steps taken by his Government reflected its commitment and sensitivity to human rights. Human rights organizations and non-governmental organizations also had a special responsibility in that regard. A one-sided approach in evaluating the performances of Governments was tantamount to condoning the actions of terrorist groups, and undermined democratic Governments and societies. It was particularly unfortunate, therefore, that Amnesty International - a prestigious non-governmental organization - should have made dramatic allegations against the Government of India that were divorced from reality and failed to note the existence in India of a responsible parliament, an independent judiciary and, more generally, an open and transparent society in which the fundamental human rights were guaranteed by the Constitution.

56. The attention given to the massive human rights violations committed by terrorist groups was still not commensurate with the scale of such violations. However, the reports of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1995/36) and the Special Rapporteur on the question of torture (E/CN.4/1995/34 and Add.1) showed some awareness of the complex difficulties encountered by democratic Governments in tackling terrorism. In view of the increasing threat to a free press, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression should pay particular attention to that question in the discharge of his mandate. His Government would continue to cooperate with the various special rapporteurs and working groups. Cases referred to it by them were always investigated and responses sent as soon as possible.

57. It was unfortunate that the delegation of Pakistan had again used the forum of the Commission to launch an acrimonious attack against India, despite the latter's attempt to develop cooperative and friendly relations with its neighbours. He was equally concerned about the human rights situation in Pakistan and would recommend that the Commission lend a voice of solidarity to the human rights organizations in that country.

58. Mr. KAUSAR (Pakistan) said that the judiciary was the key to ensuring that the protection and promotion of human rights went beyond the mere enunciation of principles. In Pakistan, a country with a low level of literacy and a predominantly rural population, the Supreme Court and the high courts had taken a number of important initiatives to promote a basic awareness of human rights among citizens. In so doing, they had relied extensively on reports in the national press and on the efforts of various human rights activists and non-governmental organizations.

59. Three specific initiatives had been taken in recent years. In 1991, the judiciary had announced a scheme for the protection of the human rights of all classes of society in the country with the aim of ascertaining, promoting and enforcing those rights that were guaranteed by Islam, the Constitution and the law. The scheme focused in particular on the poor and deprived classes of society which often had limited access to the courts and a lack of knowledge of their fundamental rights.

60. The second judicial initiative was the establishment of a Central Council for Awareness and Enforcement of Human Rights and Obligations to establish policy guidelines for the awareness and protection of human rights and to investigate any infringement of those rights. Different tiers had been established which included representation not only of members of the judiciary, but also of the locally elected heads of bar associations, police, administration, non-governmental organizations, journalists, representatives of minorities, labour and women.

61. The third initiative was to ensure that the higher courts took up human rights cases as "public-interest litigation". Such litigation had included cases of offences against women and children, gender-based discrimination, non-observance of prison reforms, violation of the rights of minorities, maltreatment of mine workers and cases of environmental pollution.

62. The Sindh High Court had pronounced that handcuffs and fetters on prisoners were contrary to human dignity. High court judges not only inspected prisoners periodically, but also took appropriate measures to promote awareness of human rights. The Chief Justice of Pakistan had also proposed the establishment of a ministry of human rights to focus exclusively on that issue.

63. In all the initiatives of the judiciary, the authorities and non-governmental and professional organizations representing women, minorities, lawyers, labour and journalists were actively collaborating with the judiciary. The latter had also been encouraging a number of lawyers to take up human rights cases without compensation.

64. For its part, his Government had established a human rights cell which, in addition to creating greater awareness among the masses, monitored human rights violations and made recommendations to the Government for providing relief to victims and would ultimately become the nucleus of a human rights commission. The office of the Federal Ombudsman had provided relief to thousands of persons in cases involving maladministration. In the province of Sindh, a Provincial Ombudsman had been established and other provinces were expected to follow suit.

65. The Supreme Court of Pakistan had progressively enforced the separation of the judiciary from the executive branch, as provided for by the Constitution. Women judges had been appointed to the higher courts. The independent Pakistan Bar Council and other bar associations regularly championed the cause of human rights.

66. Mr. ŽUŽUL (Observer for Croatia) said that insufficient attention had been accorded to the situation regarding missing persons in his country.

Despite the efforts made by the International Committee of the Red Cross (ICRC) and others working in the field, and despite his Government's insistence that the normalization of relations with the Federal Republic of Yugoslavia (Serbia and Montenegro) should assign the highest priority to the question of missing persons, the whereabouts of 2,820 persons who had disappeared in the course of aggression against Croatia had still to be ascertained. Furthermore, although his Government had approached the Working Group on Enforced or Involuntary Disappearances in 1992, requesting it to trace the thousands of missing persons, over a year had been required to clarify legal obstacles related to the mandate of the Working Group and to reach a decision in 1994 establishing a "special process" within a joint mandate of the Working Group and the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia.

67. His Government had provided data regarding 378 missing persons listed by the Federal Republic of Yugoslavia and was ready to cooperate further in that regard, but the Government of the Federal Republic of Yugoslavia refused to release the military files on Vukovar. That uncooperative attitude, which deserved condemnation, had been revealed both in the direct talks between the representatives of Croatia and the Federal Republic of Yugoslavia and the latter's refusal to receive the expert representative appointed under the special process.

68. He wondered why Belgrade had refused to receive the expert representative's mission and whether the refusal was based on opposition to the joint mandate of the special process and its functional link with the Special Rapporteur. If so, the Commission should have no difficulty in separating the mandates in order that the humanitarian process could begin to function for the benefit of all States and parties in the territory of the former Yugoslavia. If, however, the objections of the Belgrade authorities related more to substance than to form, the Commission should devote the necessary attention to the problem by continuing the activities of the special process and issuing a strong appeal to the Government of the Federal Republic of Yugoslavia to cooperate so that human tragedies could be alleviated on all sides.

69. After four years of suffering, his Government and people longed for a just and durable peace which, while preserving Croatia's territorial integrity and sovereignty, would be based on all relevant Security Council and General Assembly resolutions and the highest standards regarding the rights of all its citizens, including the minorities and ethnic communities in its territory. Given the imminent termination of the mandate of the United Nations Protection Force (UNPROFOR), it was high time to accept the Contact Group's plan for the mutual recognition of all States on the territory of the former Yugoslavia within their internationally recognized borders.

70. Mr. AKTAN (Observer for Turkey) said that his country was being subjected to an intense campaign of unfounded allegations by some non-governmental organizations (NGOs). While it was not unusual for NGOs to exaggerate violations, the exaggerations in the case of his country came dangerously close to being outright lies. It was clear that the NGOs in question, such as Amnesty International and Human Rights Watch, were politically motivated and his Government certainly did not regard them as "impartial humanitarian

bodies" within the meaning of article 3 common to the Geneva Conventions. Furthermore, the prevailing approach to human rights within the United Nations focused exclusively on the concept of violations, thereby overlooking other essential legal parameters.

71. Violations were committed in the context of violence generated by a conflict. An effective human rights system should thus determine first of all whether violence was legitimate in a given situation. Guidelines in that regard were to be found in the preamble to the Universal Declaration of Human Rights, the Vienna Declaration, and the Declaration on Principles of International Law. Indirect aggression by means of surrogates was a form of violence prohibited by the Charter and by United Nations General Assembly resolution 3314 (XXIX) (Definition of Aggression). However, his delegation had never heard any representative of a Government or non-governmental organization denounce the violence initiated by armed groups on those legal premises; still less was it aware of any resolution containing such a denunciation.

72. The first major flaw in the human rights system was thus that violence against States had become permissible in all circumstances, on the apparent assumption that violence was a practical means of promoting human rights in any country except one's own. In fact, any organized violence, even if theoretically free from terrorism, was bound to inflict considerable suffering on civilians, given the high destructive capability of modern weapons and the fact that contemporary conflicts usually took place in civilian areas. It was thus essential not to encourage or support violence under the pretext of promoting human rights.

73. The human rights system also turned a blind eye to the method of combat practised by armed "guerrillas", including the use of terror to subjugate members of the ethnic group on whose behalf they were allegedly fighting. Moreover, persons participating in a "guerrilla" war effort were wrongly regarded as civilians. The very use of the word "guerrilla" - rather than terrorist - indicated bias, when the movement concerned did not come within the scope of article 1, paragraph 4, of Protocol I Additional to the Geneva Conventions.

74. The second major flaw in the system was that no resolution existed to outlaw the type of combat he had mentioned and no mechanism to report to human rights forums the many thousands of innocent civilians massacred by armed terrorist groups. The result was that a false picture was painted, especially by the NGOs, in which States appeared to be massively violating human rights and brutally repressing those whose only fault was to ask that their human rights be respected. No consideration was given to the question of who had initiated the armed struggle, what methods of combat they engaged in, and who was actually killing civilians. The implication was that State repression was the main cause of the problem and that, once the State halted that repression and granted "legitimate rights" to the populations which backed the armed groups, terrorism would come to a natural end.

75. The third major flaw in the system was thus its politicization by the NGOs and some States, and its increasing divorce from legality. To that end, the NGOs conveniently confused human rights law with humanitarian law, with

the aim of creating suitable conditions for ethnic groups to take up arms. In that way, whether deliberately or unwittingly, they contributed to ethno-nationalism and tribalism.

76. The three major flaws he had mentioned were largely responsible for the spread of violence against States and impaired the ability of the human rights system to curb the rise in violations and to promote democratization. Consequently, more and more political orders were crumbling. Encouragement of violence by the human rights system must cease. Governments, and NGOs with their politicized and legally confusing and confused approach, would bear a heavy responsibility if the United Nations human rights system, which had always been ineffective, were to become irrelevant or even absurd.

77. Mrs. MARKIDES (Observer for Cyprus) said that her delegation endorsed the recommendations contained in the report of the Special Rapporteur on the question of torture (E/CN.4/1995/34 and Add.1) and in particular his recommendation that torture should be designated and defined as a specific crime in national legislation, thus putting an end to de facto or de jure impunity. It also supported the renewal of the Special Rapporteur's three-year mandate.

78. In accordance with the relevant provisions of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, her Government had enacted laws and taken effective administrative, judicial and other measures to prevent acts of torture in the territory under its jurisdiction. Equally important was the establishment of a preventive system of regular visits to places of detention. In that regard, her delegation supported the efforts to conclude an optional protocol to the Convention that would establish an effective system of visits in order to prevent torture and other cruel or degrading treatment. Her Government also supported the work of the United Nations Voluntary Fund for Victims of Torture and had responded positively to the appeal for financial contributions.

79. The report of the Working Group on Enforced or Involuntary Disappearances gave ample evidence of the gravity of the situation throughout the world. It was to be hoped that States would act in conformity with the Declaration on the Protection of All Persons from Enforced Disappearance and the Vienna Declaration and Programme of Action and prevent, terminate and punish acts of enforced disappearances.

80. The purely humanitarian problem of the missing persons in Cyprus had remained unresolved for more than 20 years owing to the negative attitude of the Government of Turkey. There was indisputable evidence that many of those persons had been alive and in the hands of the Turks after the cessation of hostilities in 1974. Of the missing 1,619 Greek Cypriots, some of them American citizens, 116 were women aged from 16 to 60. The right of families to know the fate of their relatives was enshrined in Protocol I Additional to the Geneva Conventions, and reaffirmed in a series of resolutions passed by the United Nations and other international forums, demanding the speedy resolution of that humanitarian problem.

81. In its resolution 1987/50, the European Commission of Human Rights had called for the tracing of and accounting for missing persons in Cyprus without

any further delay. Moreover, having considered the third inter-State recourse of the Republic of Cyprus versus Turkey, that Commission had, by 16 votes to 1, reached a conclusion - which she read out - that Turkey had violated article 5 of the European Convention on Human Rights. The single vote against had been that of the Turkish member of the Commission.

82. Sadly, in defiance of the decisions of the international community and disregarding the verdict of the European Commission on Human Rights, the occupying Power refused to cooperate with the investigatory committee set up by the United Nations in 1981, thus preventing it from fulfilling its mandate.

83. In October 1994, the Senate of the United States of America had unanimously adopted a bill concerning the investigation of the whereabouts of the United States citizens missing in Cyprus since 1974. The legislation provided that a thorough investigation of the fate of those citizens should be undertaken and that any information discovered during the investigation concerning other people missing from Cyprus should be reported to the appropriate international organizations. Her delegation expressed its appreciation of that legislation.

84. Her Government would spare no effort to find a solution to that humanitarian problem and hoped that the Government of Turkey would at last show the necessary political will to cooperate in the elucidation of all the cases. In that connection, the Commission was duty-bound to find ways and means of securing compliance with the relevant provisions of its resolutions and thus of putting an end to the suffering of the families of the missing persons.

85. Mr. GUIDETTI (Observer for Switzerland), speaking with regard to the renewal of the mandates of the Special Rapporteur on the question of torture and the Working Group on Enforced or Involuntary Disappearances, said that the reports submitted to the Commission at its current session confirmed his delegation's conviction that the mechanism for the protection of human rights must be further improved and strengthened. In his report (E/CN.4/1995/34 and Add.1), the Special Rapporteur observed that, in spite of its absolute prohibition, torture continued to be practised in a large number of States. For its part, the Working Group concluded that the phenomenon of disappearances continued to be a major problem affecting many parts of the world, and that, even more seriously, it was spreading to areas which had previously been immune to it (E/CN.4/1995/36, para. 435).

86. The existence of many conflicts and the prevalence of impunity explained, but did not justify, that state of affairs. The persistent refusal of some countries to cooperate with the Commission's procedures not only contradicted the principles of the Charter, but also lent credence to the view that the perpetrators of those violations enjoyed impunity. The Working Group reported that it had transmitted special communications to a number of States - which had never replied to its requests. A large number of States had also failed to reply to the communications or appeals of the Special Rapporteur. In that connection, he wished to point out that his own Government, which had been approached in connection with four allegations of ill-treatment

(E/CN.4/1995/34, paras. 708-713), and had not yet responded when the report was drafted, had since remedied the omission, that had been due to circumstances beyond its control.

87. His delegation particularly welcomed the Special Rapporteur's stress on the crucial role of prevention, and the desirability of introducing a system of visits to places of detention. It would like to see such a system established at the global level, through the adoption of an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and urged States to step up their cooperation with a view to expediting the work of the Commission on that essential instrument.

88. It was impossible to overemphasize the importance of adequate secretariat services to backstop the implementation of the Commission's numerous mandates. In particular, it was essential that the experts should be able to deal promptly with communications, on which the physical integrity or even the lives of the persons concerned often depended. Close collaboration between the various protective mechanisms must be continued and intensified with a view to fostering exchanges of information, increasing the effectiveness of the machinery, and strengthening its action.

89. In that connection, his delegation shared the surprise of the Chairman of the Working Group on Arbitrary Detention that there was no mechanism to collate information on proposed field missions, with a view to coordinating them and avoiding unnecessary duplication.

90. Field visits by thematic rapporteurs and experts were becoming more frequent, a trend that was to be welcomed, provided that States did not misuse such cooperation to divert attention from their refusal to comply with an ad hoc procedure previously established by the Commission. Recent visits by the Special Rapporteur had provided valuable information on the situations in various countries. However, there had to be a serious follow-up to those visits, if their recommendations were not to remain dead letters.

91. In the four years of its existence, the Working Group on Arbitrary Detention had had ample time to examine the causes of that phenomenon which, more than any other, pointed to the underlying weaknesses of political and judicial systems. Abuse of states of emergency, frequent recourse to special courts, non-recognition of the right of habeas corpus and inadequate definition of criminal offences made it possible to prosecute an individual on derisory grounds.

92. The Working Group had singled out the appointment of a special rapporteur on states of emergency and the drafting of a binding legal instrument on habeas corpus as two measures that would have an immediate practical effect. It also proposed a procedure for following up its decisions, comparable to those adopted by other thematic procedures, whereby the Commission would be responsible for exerting pressure on a refractory state. His delegation regarded such a procedure as extremely desirable, albeit of limited effectiveness. It might also be backed up by complementary action on the part of the High Commissioner for Human Rights

93. Mr. SKOGMO (Observer for Norway), having commended the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his second report (E/CN.4/1995/32) and endorsed his appeal for more support to help him fulfil his mandate, said that freedom of opinion and expression was a core right of the International Covenant on Civil and Political Rights. It was regrettable that violations of that right continued to occur in countries which had ratified the Convention and that the violators were often the Governments themselves. His delegation was deeply concerned that in several countries, the right to freedom of opinion and expression of journalists, writers and politicians was being systematically violated. Writers seemed to be particularly vulnerable as, for instance, in Bangladesh and the Islamic Republic of Iran.

94. No one should have to fear for his life for having written, translated or published a book, regardless of the content. His delegation thus condemned the continuation of the fatwa against the United Kingdom author Salman Rushdie and all those associated with his work. The fatwa was in violation of universally accepted principles of human rights and international law and must be repealed; the Government of the Islamic Republic of Iran must take an unequivocal stand on that issue.

95. Mr. BIJEDIC (Observer for Bosnia and Herzegovina), having commended the report on the special process on missing persons in the territory of the former Yugoslavia (E/CN.4/1995/37) which served as a sound basis for further investigations into the cases of tens of thousands of missing persons, said that the report and that of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1995/36) ignored the overwhelming evidence of aggression and genocide, but did at least provide enough details to make it clear who was mainly responsible for those crimes.

96. Involuntary disappearances formed part of a deliberate, planned and coordinated policy conducted by aggressors in implementation of the genocidal practice of ethnic cleansing. Almost 20,000 disappeared persons had been registered, who had been taken abroad by force or placed in concentration camps and had been tortured and even killed. The latest proceedings of the international tribunal on the former Yugoslavia had confirmed that that practice was continuing.

97. What was currently needed was for all Governments and the relevant United Nations bodies to take action to save the lives of innocent civilians. His Government was ready to cooperate fully in every way and to accepts its own responsibility. However, the United Nations must act swiftly to promote the search for missing persons and must identify those responsible. In actual fact, the so-called war was a brutal land grab by a Fascist state.

98. The International Committee of the Red Cross (ICRC) must take action to ensure compliance with the Geneva Conventions. So far, his Government had had to release prisoners of war in exchange for so-called missing persons, who had in fact been detainees. That practice, employed by the Serbs since the beginning of their aggression in Croatia, had continued on a more widespread basis in the Republic of Bosnia and Herzegovina. The ICRC, the United Nations High Commissioner for Refugees (UNHCR), the United Nations Protection Force (UNPROFOR) and the Working Group on Enforced or Involuntary Disappearances

must take both immediate and longer-term action. His delegation was in favour of establishing all the mechanisms needed to fulfil the Working Group's mandate.

Statements in exercise of the right of reply

99. Mr. KARIMIYAN (Observer for the Islamic Republic of Iran), referring to a statement by the International Falcon Movement at an earlier meeting, said that it was unacceptable for a terrorist, mafia-like group to be allowed to use the facilities of the non-governmental organizations. Its presence tarnished the reputation of the Commission.

100. Mr. AKRAM (Pakistan) said that the representative of India had referred to India's democracy and open society as the best safeguard against human rights violations. He wished to remind that representative that the delegation of Pakistan was not made up of members of the ruling party but reflected a national consensus on the question of human rights protection. Whether or not parliamentary democracy was the best way to ensure respect for human rights was irrelevant in India's case because, as the New York Times pointed out in an editorial on 28 January 1995, India's democracy was a shallow one.

101. However, regardless of whether it was or was not a democracy, a State that imposed an occupation on another automatically produced massive human rights violations. That was so in the case of India's occupation of Jammu and Kashmir, which was struggling for the right to self-determination and freedom. The struggle had turned violent when Indian troops had fired upon peaceful demonstrators on 20 January 1990, killing 100 of them in cold blood. If India withdrew its 600,000 troops from Jammu and Kashmir, the violence would stop.

102. It was worth recalling that, in his report submitted to the 1994 session of the Commission (E/CN.4/1994/31), the Special Rapporteur on the question of torture had noted a pattern of human rights violations committed by members of the security forces in the course of their operations in Jammu and Kashmir, including brutal torture and rape, often in retaliation for attacks on them by Kashmiri militant groups.

103. It had been further reported that the use of rape was common in Kashmir as a weapon against women suspected of being sympathetic to or related to alleged militants. The authorities had rarely investigated charges of rape by security forces and those which had been investigated had not resulted in criminal prosecutions.

104. The Government of India had consistently refused to allow United Nations special rapporteurs and representatives of non-governmental organizations to visit Jammu and Kashmir. It was hard to see why, if it had nothing to hide, it should have rejected all calls for an impartial investigation.

105. Mr. ABDULLAH (India) said that Pakistan wanted Jammu and Kashmir so badly that it had already fought three wars in an attempt to achieve its goal, and it systematically misused international forums to promote its position. The Government of Pakistan spoke of freedom for Jammu and Kashmir, yet it had always denied the Northern Territories - the part of Jammu and Kashmir under its control - the right to hold free elections.

106. The delegation of Pakistan had condemned the violence, yet Pakistan had been sending young boys to burn Indian schools, hospitals and government buildings and to kill everyone who disagreed with the Pakistani position. The delegation of Pakistan had spoken of rape; for his part, he would tell the Commission about all the children murdered and women brutalized by the Pakistanis. The delegation of Pakistan had criticized the human rights situation in India, whereas, in Pakistan, two Christian boys had been sentenced to death, while ethnically-motivated murders were being committed daily in Karachi.

107. His Government had proposed negotiations on all bilateral issues, but Pakistan continued to pose conditions in order to avoid talks. India sought friendship with Pakistan, because the two countries must be able to coexist. Certainly Pakistan did not intend to use its nuclear arms in Jammu and Kashmir. India and Pakistan must avoid a repetition of the war that had laid Afghanistan waste. Pakistan must comply with the will of the United Nations and withdraw from the Kashmiri territories it was occupying. India sought a better future for both countries, but that goal remained unattainable as long as Pakistan continued its terrorist activities.

108. Mrs. BU FIGUEROA (Observer for Honduras), referring to a statement made at an earlier meeting by the Commission for the Defence of Human Rights in Central America about enforced or involuntary disappearances in Honduras during the 1980s, said that that situation had been fully overcome, because the current policy of her Government was to conduct thorough investigations of those incidents.

109. Honduras was working to consolidate democracy, achieve true reconciliation among all its citizens and ensure full respect for human rights. It had demonstrated an ability to investigate its own actions, correct them and compensate for any damage, in particular by creating a compensation fund for the families of the victims.

110. In the case of Nelson Mackey and a number of others from the 1980s, the persons accused of involvement in those deplorable incidents were being investigated and her Government was striving to fill certain gaps in the law so as to prevent any future disappearances, torture or other violations of human dignity.

111. Mr. KHOURY (Observer for the Syrian Arab Republic) said that, at a previous meeting, the International Federation of Human Rights had spoken of the arrest and imprisonment in the Syrian Arab Republic of members of the so-called league for the defence of human rights and democratic freedoms, and had called upon his Government to apply the law. In connection with that case, he wished to inform the Commission that, in his country, terrorists and those who incited violence were punished. The trial of the accused, who were members of an illegal organization, had been public, they had been defended by competent lawyers, and the court had handed down sentences of several years' imprisonment for those found guilty and had acquitted a number of others in the absence of adequate proof. The court's decision had thus been the result of due process.

The meeting rose at 6.05 p.m.